

REMARKS

Claims 6, 9-20, 26, 27, 33-46, 48-53 and 55 are pending in the application. Claims 36, 43 and 49 are cancelled without prejudice to eliminate issues, and claims 35, 37, 42, 44, 49 and 51 are amended to more positively recite applicant's patentable novel invention. No claims are allowed or indicted allowable

Claims 35-46, 48-53 and 55 are rejected under 35 U.S.C. 251 as being an improper recapture of broadened claimed subject matter surrendered in the application for the patent upon which the present reissue is based. The Office Action states that in the amendment filed on January 6, 1998 applicant added the limitation "the first and the second legs are spaced from and out of contact with one another" and argued this limitation as a patentable distinction, and the Office Action concludes by alleging that new claims 35-46, 48-53 and 55 fail to include this limitation. Applicant respectfully traverses the rejection of claims 35-46, 48-53 and 55 under 35 U.S.C. 251 as being an improper recapture of broadened claimed subject matter surrendered in the application for the patent upon which the present reissue is based; however, to eliminate this issue the following action is taken.

Claim 35 on which claims 37-41 are dependent is amended (lines 28-30) for the third time; claim 42 on which claims 44-46 and 48 are dependent is amended (lines 27-29) for the fourth time; and claims 49 on which claims 51-53 and 55 are dependent is amended (lines 28-31) for the third; to recite", wherein the elongated first and second legs are spaced from and out of contact with one another". The last three lines of claims 35, 42 and 49 are amended to include the limitations of claims 36, 43 and 50, respectively. Claims 36, 43 and 50 are cancelled, and claims 37, 44 and 51 are amended to depend from claims 35, 42 and 49, respectively.

Support for the amendments to claims 35, 37, 42, 44, 49 and 51 is found, among other places, in the pending claims. Based on the forgoing, applicant respectfully requests admission of the amendments to claims 35, 37, 42, 44, 49 and 51, and consideration of claims 35, 37-42, 44-46, 48, 49, 51-53 and 55.

The amendments to claims 35, 42 and 49 brings claims 35, 37-42, 44-46, 48, 49, 51-53 and 55 into alignment with claims 6, 9-20, 26, 27, 33 and 34, in that each of the claims recites in one form or another the limitation of "the first and second legs are spaced from and out of contact with one another."

Based on the forgoing, applicant respectfully requests withdrawal of the rejection of claims 35, 37-42, 44-46, 48, 49, 51-53 and 55 under 35 U.S.C. 251 as being an improper recapture of broadened claimed subject matter surrendered in the application for the patent upon which the present reissue is based.

The Office Action states that the reissue oath/declaration filed with this application is defective. The Office Action alleges that the declaration is defective because the declaration alleges that the error in the patent is that the embodiment of the invention wherein portions of the bead on the inner surface of the frame are positioned between the inner surface of the base and the end portions of the members was not claimed. However original patent claim 20 provided coverage for these features, as such, the alleged error is not a proper reissue error.

Applicant respectfully traverses the position of the Office Action that the reissue oath/declaration filed with this application is defective; however, to eliminate this issue, a new Declaration is filed with this Amendment. The new Declaration states, in one form or another, that the error includes the omission of the recitation in the claims that the first and second legs are spaced from and out of contact with one another in U.S. Patent No. 5,813,191. This feature is now recited in at least added claim 35, and disclosed in column 7, lines 25-40 of U.S. Patent No. 5,813,191.

Based on the forgoing, applicant respectfully submits that the Declaration filed with this Amendment is not defective.


Claims 6, 9-20, 26, 27, 33-35, 37-42, 44-46, 48, 59, 51-53 and 55 are rejected as being based upon a defective reissue declaration under 35U.S.C. 251 as set forth above. Applicant respectfully traverses the rejection of claims 6, 9-20, 26, 27, 33-35, 37-42, 44-46, 48, 59, 51-53 and 55 as being based upon a defective reissue declaration under 35U.S.C. 251 as set forth above.

Applicant has discussed above that the Declaration filed with this Amendment corrects the defective ³ ~~AMM~~ of the prior Declaration. Based on the foregoing, applicant respectfully requests withdrawal of the rejection of claims 6, 9-20, 26, 27, 33-35, 37-42, 44-46, 48, 59, 51-53 and 55 as being based upon a defective reissue declaration under 35U.S.C. 251 and requests allowance of claims 6, 9-20, 26, 27, 33-35, 37-42, 44-46, 48, 59, 51-53 and 55.

This Amendment represents a sincere effort to place this application in condition for allowance. In the event issues remain, the Examiner is invited to call Mr. Andrew Siminerio at 412-434-4645, or the undersigned to discuss those issues before further action on the case is taken.

Respectfully submitted,

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